

## **Assembly Bill No. 1668**

### **CHAPTER 154**

An act to amend Sections 94110, 94140, 94143, 94144, 94146, and 94149 of, and to add Section 94145.5 to, the Education Code, relating to educational facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 2014. Filed with  
Secretary of State July 21, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1668, Wieckowski. Educational facilities: California Educational Facilities Authority.

(1) Existing law, the California Educational Facilities Authority Act, establishes the California Educational Facilities Authority for purposes of, among other things, providing private institutions of higher education within the state an additional means by which to expand, enlarge, and establish certain educational facilities, finance those facilities, and refinance existing facilities. Under the act, existing law defines "bond" to mean bonds, notes, debentures, or other securities of the authority issued pursuant to the act.

This bill would instead define "bond" to mean bonds, notes, debentures, securities, or other evidences of indebtedness of the authority issued pursuant to the act.

(2) Existing law provides that the authority has the power to, among other things, receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which the grants, loans, and contributions may be made.

This bill would instead provide that the authority has the power to, among other things, receive and accept from any source, loans, contributions, or grants for, or in aid of, the acquisition, construction, financing, or refinancing of a project, or any portion of a project, in money, property, labor, or other things of value.

(3) Existing law authorizes the authority, from time to time, to, among other things, issue its negotiable notes and negotiable bonds for any corporate purpose. Existing law also authorizes the authority to issue negotiable bond anticipation notes in anticipation of the sale of the negotiable bonds.

This bill would instead authorize the authority, from time to time, to, among other things, issue notes and bonds for any corporate purpose. The bill would authorize the authority to issue bond anticipation notes in anticipation of the sale of the bonds.

(4) Existing law, in the discretion of the authority, authorizes any bonds issued under the act to be secured by a trust agreement by and between the authority and a corporate trustee or trustees, as specified. Existing law authorizes the trust agreement or resolution providing for the issuance of bonds to contain any provisions the authority deems reasonable and proper for the security of the bondholders, including any provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper.

This bill would provide that any provision the authority may include in a trust agreement or resolution providing for the issuance of bonds under the act may also be included in a bond and the provision shall have the same effect.

(5) Existing law requires a bond issued under the provisions of the act to contain on its face a statement to the effect that, among other things, neither the state nor the authority shall be obligated to pay the bond or the interest on the bond except from the revenues of the project, or the portion of the project, for which the bond is issued.

This bill would require the statement described above to be included on the bond, but not necessarily on its face.

(6) Existing law requires all moneys received pursuant to the authority of the act to be deemed to be trust funds to be held and applied solely as provided in the act, whether as proceeds from the sale or bonds or as revenues.

This bill would instead require all moneys received pursuant to the authority of the act to be deemed to be trust funds to be held and applied solely as provided for in the act, whether as proceeds from selling or incurring bonds or as revenues. The bill would also make numerous nonsubstantive changes to these provisions.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Authority" means the California Educational Facilities Authority created by this chapter or any board, body, commission, department, or officer succeeding to the principal functions of the authority or to whom the power conferred upon the authority by this chapter is given by law.

(b) "Bond" means bonds, notes, debentures, securities, or other evidences of indebtedness of the authority issued pursuant to this chapter.

(c) "Cost," as applied to a project or portion of a project financed under this chapter, means all, or any part of, the cost of construction and acquisition of lands, structures, real or personal property, rights, rights-of-way,

franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing buildings or structures on acquired land, including the cost of acquiring lands to which the buildings or structures may be moved, the cost of machinery and equipment, financing charges, interest before, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of constructing a project or incident to the construction or acquisition or financing of a project.

(d) “Dormitory” means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) (1) “Educational facility” means a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the members of which consist of the educational institution or the members of its governing body), faculty and staff housing, parking, maintenance, storage, or utility facilities, and other related structures or facilities used for student instruction, conducting research, or operating an institution for higher education, and related facilities and equipment.

(2) “Educational facility” does not include a facility used, or to be used, for sectarian instruction or as a place for religious worship, or a facility used, or to be used, primarily in connection with a part of the program of a school or department of divinity.

(f) “Faculty and staff housing” means a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.

(g) “Participating nonprofit entity” means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(h) “Participating private college” or “participating college” means a private college that participates with the authority in undertaking the financing and construction or acquisition of a project and does not restrict the admission of a student based on his or her race or ethnicity, provided

that the financing does not violate Section 5 of Article XVI of the California Constitution or the establishment clause of the First Amendment to the United States Constitution.

(i) (1) “Private college” means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level.

(2) For purposes of obtaining financing under this chapter, “private college” also includes either of the following:

(A) A nonprofit affiliate, established on or before January 1, 2005, of one or more private colleges, as defined in paragraph (1), the sole or primary purpose of which is to provide administrative or other support services to an affiliated private college or private colleges, and that undertakes the financing of a project for the exclusive use and benefit of one or more of the affiliated private colleges.

(B) A private nonprofit research organization engaged in basic research and advanced education at the predoctoral and postdoctoral levels through personnel situated within the state, but only if the organization previously has borrowed the proceeds of bonds or other obligations previously issued by the authority.

(j) (1) “Project” means a dormitory or an educational facility, faculty or staff housing, or any combination thereof, or any function concerning student loans, or interests in student loans, as determined by the authority.

(2) For a participating nonprofit entity, “project” means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(A) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(B) The top administrative official of the public university, public college, or participating private college that the project is intended to benefit, verifies the need for housing and financing assistance in a specific area pursuant to subparagraph (D).

(C) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of subparagraph (E) and all other regulatory agreements entered into by the authority.

(D) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of

the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

- (i) There are no available and feasible sites within the five-mile radius.
- (ii) The project is near a mass transit destination.
- (iii) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(E) (i) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(I) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(II) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(III) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(IV) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(ii) For purposes of this subparagraph, the authority, through regulation or rule, shall define “student” and “faculty,” taking into consideration enrollment status requirements and employment status requirements. The definitions of “student” and “faculty” may be different for each participating campus.

(k) “Public college” means a community college.

(l) “Public university” means any campus of the University of California, the California State University, or the Hastings College of the Law.

(m) “Student housing” means a residential unit owned by a participating nonprofit entity, and located on real property owned by that entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) “Student loan” means a loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at a private college or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) “Top administrative official” means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the president in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest ranking official in the case of a participating private college.

SEC. 2. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt and have an official common seal and alter it at pleasure.

(c) Sue and be sued in its own name, and plead and be impleaded.

(d) Borrow money, issue bonds and notes and other obligations of the authority, and provide for the rights of the holders thereof as provided in this chapter.

(e) Acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) Acquire, in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper, any land or interest in land and other property that it determines is reasonably necessary for a project, including any lands held by a county, municipality, or other governmental subdivision of the state, to hold and use the property, and to sell, convey, lease, or otherwise dispose of the acquired property that is no longer necessary for the authority's purposes.

(g) Receive and accept, from any source, loans, contributions, or grants for, or in aid of, the acquisition, construction, financing, or refinancing of a project, or any portion of a project, in money, property, labor, or other things of value.

(h) Prepare, or cause to be prepared, plans, specifications, designs, and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs, or estimates.

(i) By contract or contracts, or by its own employees, to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.

(j) Employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) Determine the location and character of any project to be undertaken pursuant to this chapter, and construct, reconstruct, repair, lease, as lessee or lessor, the project, enter into contracts for any or all of those purposes, and designate a participating private college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the project and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(l) Establish rules and regulations for the use of a project, or any portion of a project, and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of

a project undertaken by the participating private college or participating nonprofit entity.

(m) Generally establish, revise from time to time, and charge and collect, rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project, or any portion of a project, and contract with holders of its bonds and with any other person, party, association, corporation, or other body, public or private, in respect thereof.

(n) Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) Charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) Finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to contract in advance for those student loans, and to contract in advance for that financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. A pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of a pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) Hold or invest in student loans, create pools of student loans, and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) Contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection with student loans, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 3. Section 94143 of the Education Code is amended to read:

94143. The authority is authorized from time to time to issue its notes for any corporate purpose and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. A resolution or resolutions authorizing notes of the authority or any issue of notes of the authority may contain any provisions that the authority is authorized to include in a resolution or resolutions authorizing bonds of the authority or any issue of bonds of the authority, and the authority may include in the notes any terms, covenants or conditions that it is authorized to include in bonds. Notes issued by the authority shall be payable from revenues of the authority or other moneys available for payment of notes and not otherwise pledged, subject only to any contractual rights of the holders of its notes or other obligations then outstanding.

SEC. 4. Section 94144 of the Education Code is amended to read:

94144. (a) The authority is authorized from time to time to issue its bonds for any corporate purpose. In anticipation of the sale of the bonds, the authority may issue bond anticipation notes and may renew the bond anticipation notes from time to time. The bond anticipation notes shall be paid from any revenues of the authority or other moneys available for payment of bond anticipation notes and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which the bond anticipation notes were issued. The bond anticipation notes shall be issued in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing the bond anticipation notes may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds or notes shall be general obligations of the authority payable from any revenues or moneys of the authority available for payment of the bonds or notes and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys and subject to any agreements with any participating institution. Negotiable bonds and notes shall be and be deemed to be, for all purposes, negotiable instruments, notwithstanding the fact that the negotiable bonds or notes may be payable from a special fund, subject only to the provisions of the bonds or notes for registration.



(c) (1) The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority, and shall bear the date or dates, mature at a time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to the terms of redemption that the resolution or resolutions may provide. The bonds or notes may be sold by the Treasurer at public sale, or the authority, after giving due consideration to the recommendations of the participating institution or participating nonprofit entity, may direct the Treasurer to sell the bonds or notes at private sale.

(2) In the case of public sale, both of the following shall occur:

(A) The bonds specified in the resolution shall be sold by the Treasurer, at a time fixed by him or her, and upon notice that he or she may deem advisable, or at the time to which the sale shall have been continued, at public sale, upon sealed bids, to the bidder whose bid will result in the lowest net interest cost on account of the bonds.

(B) If no bids are received, or if the Treasurer determines that the bids are not satisfactory, the Treasurer may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

(3) Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates that shall be exchanged for the definitive bonds.

(d) A resolution or resolutions authorizing bonds or an issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the full faith and credit of the authority or pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation, or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders that may then exist.

(2) The rents, fees, and other charges to be charged, and the amounts to be raised in each year by the rents, fees, and other charges to be charged, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition of the reserves or sinking funds.

(4) Limitations on the right of the authority or its agent to restrict and regulate the use of the project.

(5) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied and pledging the proceeds of sale to secure the payment of the bonds or an issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which that consent may be given.

(8) Limitations on the amount of moneys derived from the project to be expended for operating, administrative, or other expenses of the authority.

(9) Defining the acts or omissions to act that constitute a default in the duties of the authority to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of a project and the site of the project for the purpose of securing the bondholders.

(e) Members of the authority and persons executing the bonds or notes shall not be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance of the bonds or notes.

(f) The authority shall have the power to purchase its bonds or notes out of any funds available for purchasing its bonds or notes. The authority may hold, pledge, cancel, or resell the bonds, subject to and in accordance with agreements with bondholders.

SEC. 5. Section 94145.5 is added to the Education Code, to read:

94145.5. Any provision the authority may include in a trust agreement of or resolution providing for the issuance of bonds pursuant to this chapter may also be included in a bond and the provision shall have the same effect.

SEC. 6. Section 94146 of the Education Code is amended to read:

94146. (a) Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the state or of any political subdivision of the state, or a pledge of the faith and credit of the state or of any political subdivision other than the authority, but shall be payable solely from the funds herein provided. All bonds shall contain a statement to the effect that neither the State of California nor the authority shall be obligated to pay the bond or the interest on the bond except from revenues of the project, or the portion of the project, for which the bonds are issued and that neither the faith and credit nor the taxing power of the state or of any political subdivision of the state is pledged to the payment of the principal of, or the interest on, the bonds.

(b) The issuance of bonds under the provisions of this chapter shall not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation whatever therefor or to make an appropriation for payment of the bonds. This section shall not prevent or be construed to prevent the authority from pledging its full faith and credit, or the full faith and credit of a participating private college or participating nonprofit entity, to the payment of bonds or issue of bonds authorized pursuant to this chapter.

SEC. 7. Section 94149 of the Education Code is amended to read:

94149. All moneys received pursuant to the authority of this chapter, whether as proceeds from selling or incurring bonds, or as revenue, shall be deemed to be trust funds to be held and applied solely as provided in this

chapter. Notwithstanding any other law, until the funds are applied as provided in this chapter, the moneys may be invested in any obligations or securities authorized by resolutions of the authority authorizing the issuance of the bonds. An officer with whom, or any bank or trust company with which, the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes hereof, subject to any regulations adopted pursuant to this chapter and the resolution authorizing the issuance of any bonds or the trust agreement securing the bonds.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the loss of additional revenue, it is necessary that this bill go into immediate effect.